

FCC MAIL ROOM

Before the
Federal Communications Commission
Washington, DC 20554

2001 AUG 14 A 10: 57

In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Henry-Senachwine Community Unit District 5)
Henry, Illinois)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

SLD No. 206227

CC Docket No. 96-45

CC Docket No. 97-21 ✓

RECEIVED

ORDER

Adopted: August 10, 2001

Released: August 13, 2001

By the Common Carrier Bureau, Accounting Policy Division:

1. The Accounting Policy Division (Division) has under consideration a Request for Waiver filed by Henry-Senachwine Community Unit District 5 (Henry-Senachwine), Henry, Illinois.¹ Henry-Senachwine seeks a waiver to allow consideration of its application as filed timely within the filing window established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator) for Funding Year 3 of the schools and libraries universal service support mechanism. For the reasons that follow, we deny Henry-Senachwine's Request for Waiver.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.² In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Beverly Privratsky, Henry-Senachwine Community Unit District 5, to Federal Communications Commission, filed June 23, 2000 (Request for Waiver); *see also* Letter from Beverly Privratsky, Henry-Senachwine Community Unit District 5, to Schools and Libraries Division, Universal Service Administrative Company, filed March 13, 2000 (SLD Appeal).

² 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.³ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁴ The Commission's rules allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously received.⁵ Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.⁶ It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window.

3. Henry-Senachwine applied for discount telecommunication services for Funding Year 3 on January 15, 2000.⁷ Instead of using the appropriate Funding Year 3 FCC Form 471 application,⁸ Henry-Senachwine applied for support using a Funding Year 2 FCC Form 471 application.⁹ On February 16, 2000, SLD sent Henry-Senachwine a letter stating that it declined to accept Henry-Senachwine's Funding Year 2 FCC Form 471 because Henry-Senachwine's Funding Year 2 Form 471 failed to meet minimum processing standards for Funding Year 3.¹⁰ SLD informed Henry-Senachwine that, because it used a Funding Year 2 FCC Form 471 rather than the Funding Year 3 Form, its application could not be processed.¹¹

4. On March 13, 2000, Henry-Senachwine filed an appeal with SLD, stating that, although it submitted a Year 2 Form 471 for Funding Year 3 in error, its Funding Year 2 Form 471 was nonetheless filed before the Funding Year 3 filing window closed on January 19, 2000.¹² With its appeal, Henry-Senachwine also submitted a Funding Year 3 FCC Form 471 and requested that it be considered as filed timely within the Funding Year 3 window.¹³ SLD issued

³ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁴ 47 C.F.R. § 54.504(c).

⁵ 47 C.F.R. § 54.507(c).

⁶ 47 C.F.R. § 54.507(g).

⁷ Funding Year 2 FCC Form 471, Henry-Senachwine Community Unit District 5, filed January 15, 2000.

⁸ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (September 1999) (Year 3 Form 471).

⁹ See Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (December 1998) (Year 2 Form 471).

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Henry-Senachwine Community Unit District 5, dated February 16, 2000.

¹¹ *Id.*

¹² Letter from Beverly Privratsky, Henry-Senachwine Community Unit District 5, to Schools and Libraries Division, Universal Service Administrative Company, filed March 13, 2000 (SLD Appeal).

¹³ *Id.*

an Administrator's Decision on Waiver Request on June 16, 2000, stating that it could not consider Henry-Senachwine's request.¹⁴ Henry-Senachwine filed the instant Request for Waiver, again requesting that its Year 3 FCC Form 471 be considered as filed timely for Funding Year 3.¹⁵

5. Under our rules, SLD is authorized to establish and implement filing periods for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.¹⁶ Although the Commission may waive any provision of its rules, a showing of good cause must support a waiver request.¹⁷ A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁸ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁹ The Year 3 FCC Form 471 required additional information than the Year 2 FCC Form 471. It would be administratively burdensome if SLD were to accept the Year 2 FCC Form 471 only to return to the applicant to collect missing information that was required in the Year 3 Form 471. In this program, using the correct form and providing the correct information is particularly relevant in processing an applicant's application.

6. In this case, Henry-Senachwine asserts that despite using the wrong forms, its application should be accepted as completed within the filing window.²⁰ Henry-Senachwine contends that its Year 2 Form 471 was filed well within the filing window and SLD did not notify it of the problem until after the filing deadline.²¹ Henry-Senachwine also contends that they tried filing their Form 471 electronically, but the SLD website was down.²² Henry-Senachwine further contends that because it was not able to access the website, it could not discern whether the Form 471 for Year 3 was revised from Year 2.²³

¹⁴ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Henry-Senachwine Public Schools, dated June 16, 2000.

¹⁵ Request for Waiver *supra* note 1, at 1.

¹⁶ 47 C.F.R. § 54.507(c).

¹⁷ 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹⁸ *Northeast Cellular*, 897 F.2d at 1166.

¹⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *see also WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

²⁰ Request for Waiver *supra* note 1, at 1; SLD Appeal *supra* note 1, at 1.

²¹ *Id.*

²² *Id.*

²³ *Id.*

7. We conclude that Henry-Senachwine has provided an insufficient basis for a waiver from the general rule. SLD must review and process thousands of applications each funding year. It is administratively appropriate for SLD to require applicants to adhere to applicable program rules and application requirements.²⁴ It is therefore incumbent upon applicants to determine whether their applications are in compliance with program requirements prior to filing. Because applications may change from year to year, applicants bear the responsibility of determining whether or not the correct form is being used. Henry-Senachwine should have determined that it was using the wrong application form. The FCC Form 471 application and instructions are funding year specific,²⁵ and each set of instructions provides item-by-item instructions to the corresponding form. Further, the instructions encourage applicants to reference the SLD website, to obtain guidance material from SLD's fax-on-demand service, or to contact SLD's Client Service Bureau for assistance with the application process.²⁶ Specifically, the website instructions for completing FCC Form 471 for Year 3 provide that each form must be a "correct OMB-approved FCC Form 471, with a date of September 1999 in the lower right-hand corner."²⁷

8. We are not persuaded by Henry-Senachwine's assertion that the filing deadline should be waived because SLD did not return Henry-Senachwine's application within the filing window or because Henry-Senachwine was unable to download the proper application from the SLD website. The FCC Form 471 instructions state that if a school or library does not provide the information requested on this form, "the processing of your application may be delayed or your application may be returned to you without action."²⁸ Applicants that fail to properly complete the required application or otherwise fail to follow program rules, run the risk that their applications may not be considered within the filing window.

9. SLD received a number of applications that used the wrong form for Funding Year 3. If we were to grant a waiver for using the wrong FCC Form 471, we would then have to grant similar relief to other entities that made similar mistakes, which would in turn increase administrative burdens for SLD. For Funding Year 3, SLD received over 36,000 applications.²⁹

²⁴ See generally Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

²⁵ See generally Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 2 FCC Form 471), OMB 3060-0806 (December 1998); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (Funding Year 3 FCC Form 471), OMB 3060-0806 (September 1999).

²⁶ *Id.*

²⁷ Universal Service Administrative Company (USAC), Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>>.

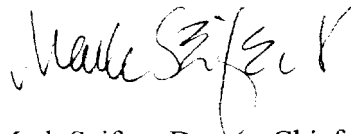
²⁸ *Id.*

²⁹ Universal Service Administrative Company, Schools and Libraries Program, Funding Commitments: Year 3 Funding Commitments, <<http://www.sl.universalservice.org/funding/y3>>.

It is impractical, if not impossible, for SLD to review each application and notify applicants of errors prior to the close of the filing window. Instead, the burden of ensuring that complete and accurate information is provided on the correct forms properly rests with applicants themselves. We therefore conclude that Henry-Senachwine has failed to make a showing warranting relief and, therefore, its Request for Waiver must be denied.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Waiver filed June 23, 2000 by Henry-Senachwine Community Unit District #5, Henry, Illinois IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Mark Seifert", is written over a horizontal line.

Mark Seifert, Deputy Chief
Accounting Policy Division
Common Carrier Bureau